



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/17177/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 November 2017**

**Decision & Reasons Promulgated  
On 23 February 2018**

**Before**

**THE HONOURABLE LORD MATTHEWS  
SITTING AS AN UPPER TRIBUNAL JUDGE  
DEPUTY UPPER TRIBUNAL JUDGE KELLY**

**Between**

**MISS S S L  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Khalid, Counsel instructed by N C Brothers & Co Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal brought by the daughter of a Gurkha who has died before exercising any right he may have had to enter the United Kingdom but his widow entered the United Kingdom with leave. Their daughter now wishes to do so and relies on Article 8 of the Convention. The Entry Clearance Officer refused entry and that decision was upheld by an Entry Clearance Manager. An appeal was taken and dealt with by the First-tier Tribunal at

a hearing on 17 January 2017. The determination was promulgated on 23 January.

2. Unfortunately the determination is deficient in a number of respects. As far as the facts are concerned paragraphs 24 and 25 indicate that the judge found that there was family life between the appellant and her mother which engaged Article 8 of the Convention and that refusal of entry clearance likely constituted an interference with family life that she enjoyed with her mother and the judge found the arguments put forward in written submissions as well to be credible as to the substance of the relationship between her and her mother. Paragraph 28 is amongst other things to the effect that the judge could not find that the relationship went above and beyond the normal types of tie between adult children of 30 and parents in their 60s. This is a major contradiction.
3. In addition, in assessing the proportionality issue, the judge relied on what I might call **Gurung Ghising**. He relied on the failed **Ghising** case which found that the historical wrong suffered by Gurkhas carried substantially less weight than that perpetrated upon British overseas citizens. As we all know that is now not thought to be the case and indeed the law is that the historic wrong is not to be regarded as carrying substantially less weight. In fact the case of **Ghising** in [2013] has effectively overruled the position as stated in 2012 so the wrong test was applied in any event by the judge.
4. Another issue which occurs to us is that nowhere in the determination is there an indication that the appellant's father would have exercised any right to enter the United Kingdom. That is a matter which has to be addressed. In view of the number and the range of the difficulties with this determination it seems to me it has not been determined at all in any meaningful sense and the matter will be remitted to the First-tier Tribunal for a full hearing so that the matter can be reconsidered before a different First-tier Tribunal Judge.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

LORD MATTHEWS  
Sitting as an Upper Tribunal Judge  
(Immigration and Asylum Chamber)

Date: 19 February 2018